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Terang Tanah Sdn Bhd & Anor v Chong Choy Lin

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02–2703–11 OF 2012
ABDUL WAHAB PATAIL, AZIAH ALI AND MAH WENG KWAI JJCA
25 JUNE 2014

Contract — Agreement — Sale and purchase — Agreement to purchase double storey house — Incorporation with another party due to financial properties — Options given to purchaser whether to proceed with development of project or rescind contract — No reply from purchaser — Purchaser proceeded to claim for damages — Claim for reimbursement for all losses suffered — Whether there was breach of contract — Whether sale and purchase agreement terminated

By a sale and purchase agreement ('SPA'), the respondent had agreed to purchase a double storey house ('the project') at the purchase price of RM272,900 to be built by the first appellant on the land belonging to the second appellant. Seven months into the agreement, the first appellant informed the respondent that due to financial difficulties, it had entered into a joint venture agreement ('JVA') with the fourth defendant to incorporate the third defendant, to undertake the further development of the project. The first appellant gave two options to the respondent namely, either to rescind the SPA and the deposit would be refunded or to enter into a new SPA with the third defendant with all costs to be borne by the respondent. The respondent informed the first appellant that she could not proceed with the construction of the project and that she was not prepared to execute a fresh SPA. The respondent demanded that the first appellant pay her the sum of RM60,705.01 as reimbursement for all the losses suffered by reason of the first appellant's breach of contract. The first appellant informed the respondent that a cheque for the refund of the deposit had been issued in her name and that she was to collect it from the first appellant. The respondent did not collect the cheque and instead filed the claim against the appellants and the third and fourth defendants on the ground of loss and damage and further sought for a declaration that the SPA had been terminated or cancelled. In their defence, the appellants denied that they were in breach of the SPA and averred that it was the respondent who had neglected her right to proceed with the SPA and as such, the respondent could not claim from the appellants. The trial judge declared the SPA terminated by reason of breach of contract by the appellants. Hence, the present appeal.

Held, allowing the appeal in part:

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(1) The appellants' appeal was allowed in part only. The declaration of the termination of the SPA by the trial judge was upheld. The trial judge was correct to declare the SPA terminated. The first appellant had informed the respondent that due to financial difficulties it would not be in a position to proceed with the construction of the project and that the same would instead be developed by the third defendant, the joint venture company set up by the first appellant and the fourth defendant. The first appellant had evinced its intention to repudiate the SPA. The intention of the first appellant was further made abundantly clear when it informed the respondent that it had issued a cheque for the refund of the 10% deposit and requested the respondent to collect the same from the first appellant's office (see paras 20 & 23).

(2) The changes to the layout and site plans of the project made by the third defendant meant that the first appellant would not, indeed never be in a position to deliver vacant possession of the house purchased by the respondent as the house could not even be located on the plans, let alone be constructed by the third defendant (see para 23).

(3) The SPA was in fact and in law terminated when the respondent rejected both the options offered by the first appellant and had instead demanded for the sum of RM60,705.01 as compensation for her losses (see para 24).

(4) The SPA had been terminated, the respondent could no longer invoke and rely on its terms to claim for the LAD. A claim for LAD is usually made when the agreement was still subsisting and there had been a delay in the delivery of vacant possession due to the default of the developer. There could not be a claim for LAD when there was no delivery of vacant possession at all as in this case where it was next to impossible for the appellants to build and deliver the house to the respondent as the appellants were no longer proceeding with the construction of the project. The respondent could only claim for actual damages against the appellants (see para 27).

(5) To allow the award of LAD as well as an award for general damages to be assessed would be tantamount to granting the respondent double relief for the same claim. It would be erroneous for the court to order an award of general damages over and above that of the LAD. For the respondent to be successful in the assessment of damages, the respondent would have to prove her loss and damage as a result of the wrongful termination of the SPA caused by the appellants (see paras 29 & 31).

[Bahasa Malaysia summary

Melalui perjanjian jual beli ('PJB'), responden telah bersetuju untuk membeli sebuah rumah dua tingkat ('projek') pada harga pembelian RM272,900 yang akan dibina oleh perayu pertama di atas tanah yang dimiliki oleh kedua perayu. Pada bulan ketujuh perjanjian itu, perayu pertama memaklumkan kepada

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responden bahawa kerana masalah kewangan, ia telah menandatangani perjanjian usaha sama ('PUS') dengan defendan keempat untuk menggabungkan defendan ketiga bagi membangunkan lagi pembangunan projek. Perayu pertama telah memberikan dua pilihan kepada responden iaitu, sama ada untuk membatalkan PJB dan wang deposit tersebut akan dibayar balik atau untuk memasuki PJB baru dengan defendan ketiga dengan semua kos akan ditanggung oleh responden. Responden memaklumkan kepada perayu pertama bahawa dia tidak dapat meneruskan pembinaan projek itu dan bahawa dia tidak bersedia untuk menandatangani PJB baru. Responden menuntut bahawa perayu pertama membayar jumlah RM60,705.01 sebagai pembayaran ganti untuk semua kerugian yang dialami disebabkan oleh pelanggaran kontrak perayu pertama itu. Perayu pertama memaklumkan kepada responden bahawa cek bagi pengembalian deposit yang telah dikeluarkan atas namanya dan bahawa dia hendaklah mengambilnya daripada perayu pertama. Responden tidak mengambil cek tersebut dan sebaliknya memfailkan tuntutan terhadap perayu dan defendan ketiga dan keempat atas alasan kerugian dan kerosakan dan seterusnya memohon deklarasi bahawa PJB telah ditamatkan atau dibatalkan. Dalam pembelaan mereka, perayu-perayu menafikan bahawa mereka melanggar PJB dan menegaskan bahawa ia adalah responden yang telah mengabaikan haknya untuk meneruskan PJB dan oleh itu, responden tidak dapat menuntut daripada perayu-perayu. Hakim perbicaraan mengisytiharkan PJB ditamatkan oleh sebab pelanggaran kontrak oleh perayu-perayu. Oleh itu, rayuan ini.

Diputuskan, membenarkan sebahagian rayuan:

(1) Rayuan perayu hanya dibenarkan sebahagiannya sahaja. Pengisytiharan penamatan PJB oleh hakim perbicaraan itu telah disahkan. Hakim perbicaraan adalah betul untuk mengisytiharkan PJB ditamatkan. Perayu pertama telah memaklumkan kepada responden disebabkan oleh masalah kewangan ia tidak akan berada dalam kedudukan untuk meneruskan pembinaan projek dan bahawa yang sama sebaliknya akan dibangunkan oleh defendan ketiga, syarikat usaha sama yang ditubuhkan oleh perayu pertama dan defendan keempat. Perayu pertama telah menunjukkan niat untuk menolak PJB itu. Niat perayu pertama terus jelas kelihatan apabila ia memberitahu responden bahawa ia telah mengeluarkan cek pembayaran balik deposit 10% dan responden diminta untuk mengambil cek dari pejabat perayu pertama (lihat perenggan 20 & 23).

(2) Perubahan kepada susun atur dan pelan tapak projek dibuat oleh defendan ketiga bermaksud bahawa perayu pertama tidak akan, sememangnya tidak akan berada di kedudukan untuk menyerahkan milikan kosong rumah yang dibeli oleh responden kerana rumah tidak boleh dikesan di atas pelan-pelan, apatah lagi dibina oleh defendan ketiga (lihat perenggan 23).

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(3) PJB itu adalah secara fakta dan undang-undang ditamatkan apabila responden menolak kedua-dua pilihan yang ditawarkan oleh perayu pertama dan sebaliknya menuntut jumlah sebanyak RM60,705.01 sebagai pampasan bagi kerugiannya (lihat perenggan 24).

(4) PJB telah ditamatkan, responden tidak boleh lagi mengguna dan bergantung atas terma-termanya untuk menuntut LAD. Tuntutan bagi satu LAD biasanya dibuat apabila masih ada perjanjian dan terdapat kelewatan dalam penyerahan milikan kosong yang disebabkan oleh kesalahan pemaju. Tidak boleh ada tuntutan untuk LAD apabila tiada penyerah milikan kosong sama sekali seperti di dalam kes ini yang mana ia adalah amat mustahil untuk perayu-perayu untuk membina dan menyerahkan rumah kepada responden memandangkan perayu-perayu tidak lagi meneruskan pembinaan projek. Responden hanya boleh menuntut untuk ganti rugi sebenar terhadap perayu-perayu (lihat perenggan 27).

(5) Untuk membenarkan award LAD dan juga award untuk ganti rugi am ditaksirkan akan menjadi sama seperti memberikan perayu dua relief untuk tuntutan yang sama. Ia akan menjadi salah bagi mahkamah untuk memerintahkan award ganti rugi am melebihi dan melampaui LAD. Untuk responden berjaya dalam taksiran ganti rugi, responden perlu untuk membuktikan kerugian dan kerosakan sebagai akibat penamatan salah PJB yang disebabkan oleh perayu-perayu (lihat perenggan 29 & 31).]

Notes

For a case on sale and purchase, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) para 2991.

Cases referred to

Anglia Television Ltd v Reed [1971] 3 All ER 690, CA (refd)

Ban Chuan Trading Co Sdn Bhd v Ng Bak Guan [2004] 1 MLJ 411; [2004] 1 AMR 81, CA (refd)

Guan Soon Tin Mining Co v Ampang Estate Ltd [1973] 1 MLJ 25, FC (refd)

Hadley v Baxendale (1854) 9 Exch 341; [1843–60] All ER 461 (refd)

Ismail v Haji Taib [1972] 2 MLJ 259, FC (refd)

National Land Finance Co-operation Society Ltd v Westingmont Holdings Sdn Bhd [2014] 1 AMCR 485, CA (refd)

Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd [1989] 3 MLJ 360; [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635, HC (refd)

Selva Kumar s/o Murugiah v Thiagarajah s/o Retnasamy [1995] 1 MLJ 817, FC (refd)

Tan Sri Khoo Teck Puat & Anor v Plenitude Holdings Sdn Bhd [1995] 3 MLJ 777; [1995] 1 AMR 41, CA (refd)

Voo Nyuk Fah @ Peter & Anor v Lam Yat Kheong & Anor [2012] MLJU

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159; [2012] AMEJ 0030; [2012] 5 CLJ 229, CA (refd)

Legislation referred to

Housing Development (Control and Licensing) Act 1966 Schedule G
Rules of the High Court 1980 O 14A r 1, O 18 r 19, O 81 r 1(1)

Appeal from: Civil Suit No S 22–572 of 2009 (High Court, Kuala Lumpur)

Nor Fazli Che Sab (Ricky Tan & Co) for the appellants.
Johnston Yap (Yap & Co) for the respondent.

Mah Weng Kwai JCA (delivering judgment of the court):

[1] By a written sale and purchase agreement ('SPA') dated 24 February 2005, the respondent agreed to purchase a double storey house in a housing development known as Sierra Ukay ('the project') at the purchase price of RM272,900 to be built by the first appellant on land belonging to the second appellant.

[2] The SPA was as per the form set out in Schedule G of the Housing Development (Control and Licensing) Act 1966.

[3] The respondent paid a deposit of RM27,290 and secured a government housing loan to pay for the balance purchase price.

[4] Pursuant to cl 23(1) of the SPA, vacant possession of the house was to be delivered to the respondent within twenty four months from the date of the agreement. In the event of default, the first appellant had agreed to pay liquidated damages ('LAD') calculated from day to day at the rate of 10%pa of the purchase price from the expiry of the twenty four months from the date of the SPA till the date of delivery of vacant possession to the respondent.

[5] By a letter dated 24 September 2005, ie seven months into the agreement, the first appellant informed the respondent that due to financial difficulties, it had entered into a joint venture agreement ('JVA') with the fourth defendant to incorporate the third defendant, to undertake the further development of the project. The first appellant gave two options to the respondent namely, either to rescind the SPA and the deposit would be refunded or to enter into a new sale and purchase agreement with the third defendant with all costs to be borne by the defendants.

[6] In response by letter dated 13 October 2005, the respondent wrote to the first appellant expressing her total disappointment that after seven months the first appellant could not proceed with the construction of the project and that

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she was not prepared to execute a fresh sale and purchase agreement. The respondent demanded that the first appellant pay her the sum of RM60,705.01 as reimbursement for all the losses suffered by reason of the first appellant's breach of contract.

[7] No further correspondence was received by the respondent from the first appellant on the progress of the project or the lack of it, until 14 November 2006 when the first appellant informed the respondent by letter that a cheque for the refund of the deposit had been issued in her name and that she was to collect it from the first appellant.

[8] The respondent did not collect the cheque and instead filed the claim against the appellants and the third and fourth defendants.

THE RESPONDENT'S CLAIM

[9] The respondent claimed that as a result of the breaches of the SPA, the appellants had failed to construct the respondent's house and to deliver vacant possession within twenty four months of the date of execution of the SPA and accordingly the respondent had suffered loss and damage. In para 16 of the statement of claim, the respondent prayed for the following reliefs:

(1) Pelaksanaan spesifik Perjanjian Jual-Beli bertarikh 24.2.2005;

(2) Ganti rugi tertentu pada kadar 10% setahun ke atas RM272,900 dari 24.2.2007 sehingga tarikh pemberian milikan kosong;

(3) Faedah pada kadar 8% setahun ke atas gantirugi tertentu yang diawadkan dari tarikh saman ini sehingga tarikh penyelesaian penuh;

(4) Perintah atau relif lain sebagaimana yang difikirkan sesuai adil dan manfaat oleh Mahkamah Mulia ini; dan

(5) Kos tindakan ini.

Secara alternatifnya,

(1) Satu deklarasi bahawa Perjanjian Jual-Beli bertarikh 24.2.2005 telah ditamatkan atau alternatifnya pembatalan Perjanjian Jual-Beli bertarikh 24.2.2005;

(2) Ganti rugi tertentu pada kadar 10% setahun ke atas RM272,900 dari 24.2.2007 sehingga tarikh pemberian milikan kosong;

(3) Ganti rugi khas sebanyak RM33,410.01;

(4) Ganti rugi am kerana pelanggaran kontrak untuk ditaksirkan oleh Mahkamah Mulia ini;

(5) Faedah pada kadar 8% setahun ke atas jumlah yang diawadkan dari tarikh penghakiman sehingga tarikh penyelesaian penuh;

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(6) Perintah atau relif lain sebagaimana yang difikirkan sesuai adil dan manfaat oleh Mahkamah Mulia ini; dan

(7) Kos tindakan ini.

[10] It is important to bear in mind at this juncture that the respondent had prayed alternatively, for a declaration that the SPA had been terminated or cancelled.

THE DEFENCE OF THE APPELLANTS

[11] In brief, the appellants in their defence denied that they were in breach of the SPA and averred that it was the respondent who had 'mengabaikan haknya untuk meneruskan' the SPA and as such the respondent could not claim from the appellants.

[12] Additionally, the appellants averred that the respondent was in breach when she had rejected the two options offered to her and that she had failed to mitigate her losses.

[13] At the trial, DW1 testifying on behalf of the first appellant, said that the first appellant was not liable to pay LAD to the respondent since the first appellant was no longer developing the project which had been taken over by the third defendant. DW1 further said that as the second appellant was only the proprietor of the land, the second appellant had no contractual obligations under the SPA.

THE INTERLOCUTORY APPLICATIONS

[14] For completeness a quick reference will be made to the following applications.

(a) the respondent's application for summary judgment against the appellants and the third and fourth defendants under O 81 r 1(1) of the Rules of the High Court 1980.

The application for, inter alia, specific performance of the SPA was dismissed.

(b) the third and fourth defendant's application to strike out the respondent's claim under O 18 r 19 of the Rules of the High Court 1980.

The application was allowed and the statement of claim against the third and fourth defendant was struck out. The respondent filed an appeal against the decision.

(c) the respondent's application under O 14A r 1 of the Rules of the High

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Court 1980 for the disposal of the action on a point of law.

The point of law raised was whether the appellants would be able to perform their contractual obligations and to deliver vacant possession of the house to the respondent when the third and fourth defendants had admitted that the original plans and layout of the project had been substantially changed and the exact location of the respondent's house in the revised project could not be ascertained. The application was dismissed and no appeal was filed by the respondent.

THE ORDER OF THE HIGH COURT

[15] After a full trial the learned trial judge, on 17 October 2012 declared the SPA terminated by reason of breach of contract by the appellants and allowed the alternative claim as follows:

(1) ganti rugi tertentu yang dihitungkan pada kadar 10% setahun ke atas RM272,900 dari tarikh 24.2.2007 sehingga tarikh perintah ini;

(2) ganti rugi khas sebanyak RM33,410;

(3) ganti rugi am kerana perlanggaran kontrak untuk ditaksirkan oleh Penolong Kanan Pendaftar Mahkamah Mulia ini;

(4) faedah; dan

(5) kos.

THE APPEAL

[16] Being dissatisfied with the order of the learned trial judge the appellants appealed against the said order.

DECISION OF THE COURT OF APPEAL

[17] Upon reading the *rekod rayuan* and the written submissions of counsel for the appellants and the respondent and upon hearing the oral submissions of counsel aforesaid, the court unanimously decided to allow the appeal in part by setting aside para 1 of the High Court order while affirming paras 2 and 3 of the order with the general damages to be assessed by the registrar as at 13 October 2005, the date of the respondent's letter demanding for reimbursement of her loss and damage together with interest and costs.

APPLICATION FOR LEAVE TO APPEAL BY THE RESPONDENT

[18] Being dissatisfied with the order of this court, the respondent has filed an application for leave to appeal against part of the said order to the Federal Court.

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[19] The appellants have not similarly applied for leave to appeal against that part of the order affirming the learned trial judge's order on the special and general damages awarded to the respondent.

GROUNDS OF DECISION

[20] It must be reiterated here that the appellants' appeal was allowed in part only. The declaration of the termination of the SPA by the learned trial judge was upheld by the court. The respondent now intends to appeal against that part of the order setting aside the award of the LAD.

[21] The respondent's alternative claim was for a declaration that the SPA had been terminated. This the learned trial judge granted on 17 October 2012 after considering the pleadings and the documentary and oral evidence, by declaring the SPA terminated (*ditamatkan*) by reason of the breach of contract by the appellants.

[22] The respondent is not complaining about the order declaring the SPA terminated and neither are the appellants as they have not filed an application for leave to appeal to the Federal Court. Indeed, the respondent most certainly cannot be heard to be complaining about the termination of the SPA as after all it was the alternative prayer of the respondent. And the appellants by not filing for leave to appeal must be taken to be satisfied with the order declaring the SPA terminated.

[23] Notwithstanding the above, we are of the view that the learned trial judge was correct to declare the SPA terminated. The first appellant by its letter of 24 September 2005 had informed the respondent that due to financial difficulties it would not be in a position to proceed with the construction of the project and that the same would instead be developed by the third defendant, the joint venture company set up by the first appellant and the fourth defendant. By this letter the first appellant had evinced its intention to repudiate the SPA. The intention of the first appellant was further made abundantly clear when it informed the respondent by letter dated 14 November 2006 that it had issued a cheque for the refund of the 10% deposit and requested the respondent to collect the same from the first appellant's office. Further, the changes to the layout and site plans of the project made by the third defendant meant that the first appellant would not, indeed never be in a position to deliver vacant possession of the house purchased by the respondent as the house could not even be located on the plans, let alone be constructed by the third defendant.

[24] As for the date of termination we are of the considered view that the SPA was in fact and in law terminated on 13 October 2005 when the respondent

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rejected both the options offered by the first appellant and had instead demanded for the sum of RM60,705.01 as compensation for her losses.

[25] What then is left to be set out in these grounds of judgment are the reasons for the court setting aside para 1 of the order dated 7 October 2012 namely, the LAD calculated at 10%pa on the purchase price of RM272,900 from 24 February 2007 (the date for vacant possession after the expiry of twenty four months from the date of the SPA) till the date of the court order of 17 October 2012.

[26] At the expense of repetition, it must be stated that neither the respondent nor the appellants are complaining against the orders granting the award of the special and general damages to the respondent. These orders in paras 2 and 3 are the same as the alternative prayers pleaded by the respondent.

[27] There are two reasons why the court had set aside para 1 of the order. Firstly, we are of the view that as the SPA had been terminated, the respondent can no longer invoke and rely on its terms to claim for the LAD. A claim for LAD is usually made when the agreement is still subsisting and there has been a delay in the delivery of vacant possession due to the default of the developer. There cannot be a claim for LAD when there is no delivery of vacant possession at all as in this case where it is next to impossible for the appellants to build and deliver the house to the respondent as the appellants are no longer proceeding with the construction of the project. The respondent can only claim for actual damages against the appellants.

[28] And where a plaintiff is claiming for damages in an action for breach of contract he must prove the actual damages or the reasonable compensation in accordance with the settled principles in *Hadley v Baxendale* (1854) 9 Exch 341; [1843–60] All ER 461. Any failure to prove such damages will result in the refusal of the court to award such damages (see *Selva Kumar s/o Murugiah v Thiagarajah s/o Retnasamy* [1995] 1 MLJ 817 (FC)).

It is trite law that a party seeking damages bears the burden of proving both the fact and the amount of damages before he can recover the damages; if he proves neither, the action will fail or he may be awarded only nominal damages upon proof of the fact of damage (see *Voo Nyuk Fah @ Peter & Anor v Lam Yat Kheong & Anor* [2012] MLJU 159; [2012] AMEJ 0030; [2012] 5 CLJ 229 (CA); *Popular Industries Ltd v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1990] 1 CLJ 133; [1990] 2 CLJ (Rep) 635; *Guan Soon Tin Mining Co v Ampang Estate Ltd* [1969] 1 MLJ 99; [1973] 1 MLJ 25 and *Tan Sri Khoo Teck Puat v Plenitude Holdings Sdn Bhd* [1995] 3 MLJ 777; [1995] 1 AMR 41).

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[29] Secondly and in any event, to allow the award of LAD as well as an award for general damages to be assessed would be tantamount to granting the respondent double relief for the same claim. We are of the view that it would be erroneous for the court to order an award of general damages over and above that of the LAD.

[30] It is also trite that in the event of a breach of contract by a defaulting party, the claimant may either claim for his loss of profits or for his wasted expenditure. The claimant must elect either of them but cannot claim for both. In *Anglia Television Ltd v Reed* [1971] 3 All ER 690 Lord Denning MR in his judgment said:

> It seems to me that a plaintiff in such a case as this had an election: he can either claim for his loss of profits; or for his wasted expenditure. But he must elect between them. He cannot claim both. If he has not suffered any loss of profits - or if he cannot prove what his profits would have been - he can claim in the alternative the expenditure which has been thrown away, that is, wasted by reason of the breach. That is shown by *Cullinane v British 'Rema' Manufacturing Co Ltd* [1953] 2 All ER 1261, 1264, 1265;[1954] 1 QB 292, at 303, 308.

The above passage was followed with approval in *Ismail v Haji Taib* [1972] 2 MLJ 259 (FC) (per Suffian FJ as he then was) and recently in the Court of Appeal decision in *National Land Finance Co-operation Society Ltd v Westingmont Holdings Sdn Bhd* [2014] 1 AMCR 485 at p 499 (see also the Court of Appeal decision in *Ban Chuan Trading Co Sdn Bhd & Ors v Ng Bak Guan* [2004] 1 MLJ 411; [2004] 1 AMR 81).

[31] For the respondent to be successful in the assessment of damages, the respondent would have to prove her loss and damage as a result of the wrongful termination of the SPA caused by the appellants. The quantum of the LAD may perhaps be indicative of the total loss and damage suffered by the respondent.

[32] The learned trial judge had ordered the LAD to be calculated from 24 February 2007 till 17 October 2012 the date of the order, with the general damages to be assessed by the registrar. On setting aside the award of LAD we ordered the general damages to be assessed by the registrar as at 13 October 2005, the date of the respondent's letter to the first appellant in response and regarded by the court as the date of termination. We are of the view that the date 24 February 2007 (ie expiry of twenty four months after the date of the SPA) cannot be regarded as the date of termination as it was apparent from the first appellant's letter of 24 September 2005 that the first appellant would not be in a position to construct and complete the project. The date 24 February 2007 was merely a contractual date and as the contract had been terminated it no longer applied.

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[33] Finally, we hold the view that the respondent is not entitled to the claim for LAD whether calculated up to 13 October 2005, the date of termination of the SPA or to 24 February 2007, the date of expiry of twenty four months from the date of the SPA in addition to general damages as it would, as stated earlier, be tantamount to an order of double payment by the appellants to the respondent.

CONCLUSION

[34] In the result, the appeal was allowed in part only with the order for LAD set aside and for the general damages to be assessed as at 13 October 2005. The orders for special damages and interest were affirmed.

Appeal allowed in part.

Reported by Afiq Mohamad Noor